The 25th October, 1994.

No. 14/13/87/6Lab.-/767.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Trbunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Plasser India Private Limited Faridabad *versus* Birja Sharma.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL-I, FARIDABAD.

**Reference No. 266 of 89**

IN THE MATTER OF INDUSTRIAL DISPUTES

*between*

SHRI BIRJA SHARMA SON OF JHULAN SHARMA C/O SHRI PRADEEP SHARMA, ADVOCATE, 39, NISHAN HUT, NH. 5, NIT, FARIDABAD.

.. *Workman.*

*and*

M/S. PLASSER INDIA PRIVATE LIMITED, 13, MILESTONE, MATHURA ROAD, P. O. AMAR NAGAR, FARIDABAD.

.. *Management.*

*Present* :

Shri A. K. Bajpai, authorised representative for the workman.

Shri K. P. Aggarwal, authorised representative for the Management.

AWARD

Under the provisions of section 10(1) (d) of Industrial Disputes Act, 1947 the Government of Haryana have,—*vide* endorsement No. O. V./FD/129-89/37115—20, dated 28th August, 1989 referred dispute regarding termination of the services of Shri Birja Sharma to this court for adjudication.

2. The facts as alleged by the workman are that he had joined the company as carpenter in the year 1981 and was drawing Rs. 1650 per month as his wages. His work was to the entire sstisfaction of the Management but the letter got annoyed with him in the year 1988 when he had wanted to form workers union. Since this act of his was not liked by the Management, the same wanted to get rid of him and hatched a conspiracy with the help of Karamvir Black Sheep amongst the workers and implicated him in a false case of theft. In that sequence he was placed under suspension with the direction that he should collect his charge-sheet on 28th October, 1988. The charges levelled against him were that six tools of the company which were of the value of Rs. 50 only had been kept by him in a bag left by him at Paras Nath's House. A domestic enquiry was conducted by K. P. Aggarwal who had given a report at the behest of the management end accepting the same the Management had imposed penalty dismissal on 12th June, 1989 in a mechanical manner.

3. The allegations of the workman further are that he had not been supplied with copies of documents produced by the Management and that he had protested against the conduct of the Enquiry Officer, who did not pay heed to the question/objections raised in his repeated representations made orally and in writing and that he had continued with the enquiry proceedings without providing fair opportunities and in this way had violated principles of natural justice. According to the workman the Enquiry Officer who was biased had conducted himself as if he was an agent of the Management and used to record the statement of the witnesses in his own style. The workman has also claimed that the tools allegedly recovered from him were his own and that the name of the company was written thereon lateron. This apart, neither the number of tools was counted nor any F. I. R. was lodged or complaint made to police. The workman has also alleged that copy of the enquiry report was not supplied to him and that he had not been paid full subsistence allowance as required by the standing orders and that his past record was also not taken into consideration.

So taking the ground that the charges levelled were all false and the enquiry held was nothing but a trash, the workman has claimed his reinstatement with continuity of service and full back wages. He has also claimed compensation and interest theron amounting to Rs. 50,000 for his illegal dismissal.

4. The management has, in its written statement denied that the workman had good record. It has also be denied that the workman wanted to form a union of the employees and that any conspiracy was hatched against him. In fact, the workman had committed theft of the tools and for this serious misconduct was suspended from duty on 24th October, 1988. A charge-sheet was given to him on 28th October, 1988. A fullfledged domestic enquiry was conducted from 4th November 1988 to 6th May, 1989 according to the principles of natural justice. It has been denied that the Enquiry Officer K. P. Aggarwal did not give any opportunity to the claimant to defend his case. He was given a facility of calling and outside union official and full opportunity was given to him to cross-examine Management witnesses. and to produce his evdence in his defence. It has also been denied that the Enquiry Officer did not record the objections of the claimant or his conduct was biased. Further case of the Management is that after the charges of theft had been proved against the workman it had completely lost its confidence in the workman and had, thus, dismissed him from service. It has also been contended that the punishment of dismissal was commensurate in the offence committed by him. It has also been denied that the value of the stolen tools was not more than Rs. 50 or that the workman had been victimised. According to the Management, the workman is gainfully employed.

5. In the rejoinder, pleas taken by the workman have been reiterated while those in the written statement controverted.

6. On the pleadings of the parties following issues were framed on the 17th October, 1990:—

(1) As per reference O. P. Parties.

(2) Whether enquiry was fairly and legally conducted ? OPM.

7. I have perused written notes supplied by the parties as also facts available on the file. My findings on the issues, with reasons therefor, are as under :—

(Issue No. 2 is proposed to be dealt with first as it has bearing on issue No. 1 ).

**Issue No. 2 :**

8. In his examination as W. W. 1, the workman admitted receipt of charge-sheet Ex. M. 2 and notice of enquiry Ex. M. 1. Enquiry proceedings Ex. M. 3 show that the entire enquiry was attended by the workman Birja Sharma as also his representative Hoob Lal a union leader who had cross-examined the witnesses of the management in detail. The workman was examined in defence on 6th May, 1989 and he had made a statement that he was not to produce any other witness. Copies of each days proceedings were supplied to the workman and in token thereof his signatures as also the signatures of his representative Hoob Lal were obtained.

9. K. P. Aggarwal, Enquiry Officer, examined as M. W. 1 stated that before starting enquiry he had explained the procedure of enquiry to the workman as is evident from pages 2 and 3 of the enquiry proceedings Ex. M. 3 and had obtained the signatures of the workman thereon. It was also stated by him that although representatives from outside could not be brought but even then he had allowed the workman to engage Hoob Lal as his representative and that he had given every sort of facility to the workman. He admitted receipt of letter Ex. W-1 to Ex. W-6 from the workman but denied that he had not supplied copies of documents to the workman or had ignored the objections of the workman. He also denied that he was the legal adviser of the company at the time of holding enquiry . All that had been said by him was that he used to give advice on some of the occasions. The Enquiry Officer also denied that he had not given chance of defence or had not properly conducted the enquiry.

10. Enquiry proceedings Ex. M. 3 have also been gone through. The same disprove some of the allegations that have been levelled by the workman. The Management had produced five witnesses namely B. R. Verma, Karamvir Singh, Om Singh, Vijender Singh and Jag Mohan. All of them were cross-examined at length and copies of their statements were supplied to the workman and his signatures obtained. On 13th April, 1989 the representative of the Management had made a request that one more chance be given to the Management to produce more evidence. This request of his was declined by the Enquiry Officer and the evidence of the Management was closed. This belies the stand

of the workman that the Enquiry Officer was out to help the Management or was conducting himself as if he was the agent of the Management. The proceedings of 4th February 1989 show it that copies of documents exhibited as M-8 to M-12 by the Enquiry Officer were supplied to the workman and receipt obtained from him. Ex. M-13 was supplied on 11th November 1988. These proceedings also show that Hoob Lal admitted having received list of witnesses of the Management on the 19th November, 1988 but wanted time fo. making preparation to cross-examination the witnesses to be produced by the Management. The proceedings of 25th February, 1989 show it that on the 18th February, 1989 the Management had offered to supply documents to the workman but he did not accept the same. So on this date documents viz. Ex. M. 8 to M. 12 (of enquiry proceedings) were supplied to the workman in the presence of Enquiry Officer and signatures of the workman also obtained. Ex. M-1 to M-7 produced before the Enquiry Officer were one bag and the tools put therein. There is also no substance in the allegations of the workman that he had not been allowd to fully cross-examine B. R. Verma, produced before the Enquiry Officer. The trail of cross-examination of this witness before the Enquiry Officer that one of the suggestions put to the witness that he was deposing falsely leave one in no manner of doubt that the cross-examination of the witness was complete. The signatures of the workman in token of having received copy of the proceedings without any reservations prove the stand of the Management.

11. The allegations of the workman that he had not been supplied with the copy of the charge-sheet alongwith suspension order have no force because it is not the legal requirement to supply suspension order and charge-sheet simultaneously. In this case, there had not been any delay in issuing charge-sheet. The workman was placed under suspension on 24th October 1988 while the charge-sheet was served upon to him on 28th October, 1988. This plea of the workman that the Enquiry Officer was a legal adviser of the Management has also been negatived by K. P. Aggarwal Enquiry Officer examined as M. W. 1. Therein, he had stated that he had only given advice to the Management on some occasions before initiating enquiry. No proof of his functioning as legal adviser has been placed on record.

12. In the written notes furnished by the workman, a point has been raised that the name of B. R Veema was not there in the list of witnesses of the Management and that the Enquiry Officer had examined this witness ignoring the protests lodged by the workman. The Enquiry Officer should have, therefore not given consideration to the statement of this witness for whose examination no permission was obtained. I find no force in this plea because the Enquiry proceedings do not show it that any objection was taken by the workman when B.R. Verma was being examined by the Enquiry Officer.

13. The Hon'ble Supreme Court of India had in **Sur Enamel and Stemping Works Ltd.**, *versus* **Their workman** 1963-64 FJR (25) 88 held that domestic enquiry into misconduct alleged against a workman cannot be said to have been properly held unless :—

(i) The workman proceeded against has been informed clearly of the charges levelled against him ;
(ii) The witnesses are examined-ordinarily in the presence of the workman-in respect of charges ;
(iii) The workman is given a fair opportunity to cross-examine the witnesses ;
(iv) He is given a fair opportunity to examine witnesses including himself in his defence, if he so wishes on any relevant matter, and
(v) The Enquiry Officer records his findings with reasons therefor in his report.

As discussed in para 8 of this Award there has been complete compliance of four of the principles mentioned at (i to iv) above. As regards (v) above the perusal of the enquiry report Ex. M. 4 shows that the Enquiry Officer has based the same on the material that had come before him. In the written notes there is mention of material contradictions in the statements of the witnesses examined before the Enquiry Officer and also that alleged charges have not been proved. It has not been spelt out as to what are the contradictions and how the charges have not been proved. In the demand notice, the workman has not claimed that the tools recovered from his possession were his own. In his examination as W. W. 1 the workman admitted that the tools were the same which were found in his possession and that the same contained marking of the company. His stand that he had been keeping has own tools as he used to work outside cannot be accepted because he has not obtained the permission of the company to do part time job may be even beyond has duty hours. The recovery of the tools from the possession of the workman has been proved by the consistent statements of the witnesses produced by the Management before the Enquiry Officer. No suggesion was put to them as to why they were deposing against the workman. Moreso, as held in J. D. Jain *versus* Management of State Bank of India and another 1982 Supreme Court Cases—(L&S) 68, strict rules of evidence are not applicable in domestic enquiry. The charges need not be established beyond reasonable doubt and proof of his misconduct is sufficient." The allegations of the workman that the Management wanted to appoint Karamvir as carpenter in place of the workman and for that purpose had made Karamvir a tool in the conspiracy of theft hatched has also no force because according to Management Karamvir has not been appointed till date as carpenter.

14. Admittedly, the Enquiry Officer or the Management had not supplied the copy of the enquiry report or that of the Standing Orders to the deli quent. This was not the requirement of the law at the relevant time to supply copy of the enquiry report. The cut out date as held in famous Mohd. Ramzan's Case was 20th Nov mb r, 1990 with prospective effect. Moreso, no prejudice has been caused to the workman who had been supplied copy of each days proceedings and from there he ha well come to know that what was the case against him. The non-supply of copy of the Standing orders has also not jeopardised the interests of the workman in this case.

15. In the context of detailed discussion made above on facts and law, it is held that the enquiry was fairly and legally conducted and there had been no violation of any of the principles of natural justice. This is thus, decided in favour of the Management and against the workman.

**Issue No 1 :**

16. The stand of the workman is that the Management had victimised him because he wanted to form workers union. No evidence whatsoever has been led by the workman to show as to with whom he had discussed the issue of forming employees union. According to the Management witnesses, there is no such union in the company till this day. Mere allegations, vague suggestion and insinuations re not enough. This stand of the workman that a conspiracy was hatched to get rid of him because B. R. Verma Personnel Officer wanted to appoint one Karamvir as carpenter has also not been found to be correct because till date above said Karamvir is continuing to work as helper.

17. M. Trenner Director of the Company who had issued dismissal order Ex. M. 3 on the basis of nquiry Report Ex. M. 4 stated in his examination as M.W. 2 that the workman made a confession before him and also tendered appology. He had denied that the price of the tools was less than Rs. 100

17A. In the matter of theft the value of goods is immaterial and for that matter no consideration can be given to the averments made on behalf of the workman that the punishment awarded was not commensurate with the offence committed. In State of Punjab through the General Manager Punjab Roadways Haryana Harjinder Singh Conductor and another 1 93 LLR (Punjab and Haryana) 3 it was held, "that the dismissal of bus conductor who had collected fare from the passengers and pocketed Rs. 9.70, his dismissal from service was justified." This apart, it has been held by the Hon'ble Supreme Court in East India Hotels *versus* their workman and others 1 74 Lab. I. C. 532 that when "a proper enquiry has been held by an employer and the finding of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an Appellate body. The interference with the deci ion of the employer will be justified only when the enquiry is unfair or the findings arrived at in the enquiry are perverse or have no basis in evidence or the Management is guilty of victimisat on, unfair labour practice or or the punishment is harsh and oppressive. The Tribunal cannot reappraise evidence and arrive at a conclusion different from that arrived at by the domestic tribunal).

18. It has been proved in this case that the enquiry was fair and the report of the Enquiry Offi e s based on evidence produced before him. The Ma agement has also not been found guilty of victimisation or unfair labour practice. Therefore, aking his view of he matter and also that the punishmen was not disp opo tionate to be prove misconduct, I hold that the services of the workman had been terminated in a justified and legal manner and for that reason the workman is not entitled to relief. award is passed accordingl .

The 26th September, 1994.

(Sd.). . .,

Presiding Officer,
Labour Court-cum-Industrial Tribunal-I,
Faridabad.

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Endorsement No. 3558, dated the 27th September, 1994.

A copy with three spare copies is forwarded the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department Chandigarh.

(Sd ). . .,

Presiding Officer,
Labour Court-cum-Industrial Tribunal-I,
Faridabad.